

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter)	
)	
CENTURYLINK QC)	
)	
and)	CC Docket No. 96-45
)	
NUNN TELEPHONE COMPANY)	
)	
Joint Petition for Waiver of the Definition of “Study)	
Area” Contained in Part 36, Appendix-Glossary of the)	
Commission’s Rules		

JOINT PETITION FOR WAIVER

Pursuant to Section 1.3 of the Federal Communication Commission’s (“FCC” or “Commission”) rules, CenturyLink QC (“CenturyLink”) and Nunn Telephone Company (“Nunn”), by and through their counsel, request a waiver of the definition of “study area” contained in the Appendix-Glossary of Part 36 of the Commission’s rules. The purpose of this waiver is to allow CenturyLink to remove a portion of its Eaton-Ault Exchange (the “Transfer Area”), with four subscriber lines and another four non-active end user locations, from CenturyLink’s Colorado study area and for Nunn to add the Transfer Area to its study area. Attachment 1 sets forth the legal description of the Transfer Area.

Petitioners respectfully request that the Commission find that this Petition is appropriate for streamlined treatment and expeditiously issue a public notice seeking comment on this Joint Petition for Waiver so that it can go into effect in accordance with Section 36.4(a) of the Commission’s rules.¹ No new issues of law are raised by the Petition and the supporting facts

¹ 47 C.F.R. § 36.4(a).

and circumstances supporting comply with the standard for waiver set out in the *USF/ICC Transformation Order*.²

I. BACKGROUND

CenturyLink is an incumbent local exchange carrier (“ILEC”) that serves Colorado, as well as other states. Together with its affiliates, CenturyLink is the largest ILEC operating in Colorado. CenturyLink’s study area is referred to by the Universal Service Administrative Company (“USAC”) as Study Area Code 465102. Following the proposed transfer, CenturyLink will continue to provide local telephone service within the other areas of Colorado that it serves and will retain its study area for those exchanges.

Nunn is a rural telephone company providing service within its study area in Colorado, which is referred to by USAC as Study Area 462194. As of April 1, 2017, Nunn was providing services to approximately 461 rural residential customers and 148 rural business customers in Colorado. Nunn is classified as a rural telephone company and is an eligible telecommunications carrier under the Communications Act of 1934 as amended by the Telecommunications Act of 1996 (the “Act”). Nunn receives federal Universal Service Fund (“USF”) support as a “cost company,” not a “price cap company.”

²*In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17760-65 ¶¶ 260-267 (2011) (“*USF/ICC Transformation Order*”) (subsequent history omitted).

II. THE PROPOSED STUDY AREA WAIVER IS WARRANTED AND WILL SERVE THE PUBLIC INTEREST

Petitioners seek a waiver of the frozen study area boundaries between their serving areas in Colorado. Part 36 of the Commission's Rules "freezes" the definition of "study area" to the boundaries that were in existence on November 15, 1984.³ This "freeze" was due, in part, to the Commission's concern over the level of interstate cost recovery by LECs from the USF and was intended "to ensure that LECs do not set up high cost exchanges within their existing service territories as separate study areas to maximize high cost support."⁴

The Commission has recognized that changes "that result from the purchase or sale of exchanges in arms-length transactions" do not necessarily raise the concerns which prompted the freeze.⁵ The failure to waive the rule in the case of the sale of exchanges would produce an absurd result, forcing the seller to continue to include exchanges in its study area for which it has no costs, and preventing the buyer from including in its study area exchanges it actually serves.⁶ Such a result would not serve the Commission's policy objective of ensuring that carriers' actual costs are reflected in their accounting so that they can accurately set just, reasonable, and nondiscriminatory rates.

³ See 47 CFR Part 36, Appendix—Glossary.

⁴ *In the Matter of US West Communications, Inc. and Eagle Telecommunications, Inc. Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules and Eagle Telecommunications, Inc. Petition for Waiver of Section 61.41(c) of the Commission's Rules*, Memorandum Opinion and Order, 10 FCC Rcd 1771, 1773, ¶ 10 (1995) (citations omitted).

⁵ See, e.g., *Alltel Corporation Petition for Waiver of Section 36.125(f), Sections 36.154(e)(1) and (2), and the Definition of "Study Area" contained in Part 36, Appendix-Glossary of the Commission's Rules*, Memorandum Opinion and Order, 5 FCC Rcd 7505, 7505 ¶ 7 (Com. Car. Bur. 1990).

⁶ *Amendment to Part 36 to the Commission's Rules and Establishment of a Joint Board*, Notice of Proposed Rulemaking, 5 FCC Rcd 5974, 5975-76 ¶ 17 (1990).

In the *USF/ICC Transformation Order*, the Commission established a two-pronged test for deciding whether study area waivers should be granted:

- (1) the state commission having regulatory authority over the transferred exchanges does not object to the transfer, and
- (2) the transfer must be in the public interest.⁷

The Commission further stated that the evaluation of the public interest benefits of the proposed waiver will include “(1) the number of lines at issue; (2) the projected universal service fund cost per line; and (3) whether such a grant would result in consolidation of study areas that facilitates reductions in cost by taking advantage of the economies of scale, *i.e.*, reduction in cost per line due to the increased number of lines.”⁸

A. The Colorado Public Utility Commission Does Not Object to the Proposed Transfer

On December 16, 2016, CenturyLink and Nunn filed a joint application with the Colorado Public Utilities Commission (“Colorado Commission”) to revise portions of each company’s operating area, replace CenturyLink with Nunn as the carrier of last resort in the Transfer Area, and address other matters related to implementing these changes.⁹ As the Application was uncontested, it was processed without formal hearing and was granted on March 1, 2017. The Order noted that the parties would be filing this petition, as well as a Section 214

⁷ *USF/ICC Transformation Order*, 26 FCC Rcd at 17762 ¶ 265.

⁸ *Id.* The Commission stressed, however, that these factors are guidelines “and not rigid measures for evaluating a petition for study area waiver.”

⁹ *In the Matter of the Joint Application of Qwest Corporation dba CenturyLink QC (“CenturyLink QC”) and Nunn Telephone Company to Rearrange Their Exchange Area Boundaries and to Designate Nunn Telephone Company as the Provider of Last Resort*, Commission Decision Granting Joint Application and Designating Nunn Telephone Company as a Provider of Last Resort, Proceeding No. 16A-0967T, Decision No. C17-0173 (filed Dec. 16, 2016) (“Colorado PUC Application”) (attached as Attachment 2).

application, for this Commission's approval prior to closing the transaction.¹⁰ A copy of the Colorado Commission's Order is attached as Attachment 2.

B. The Public Interest Will Be Served By Grant Of The Requested Study Area Waiver

As stated in the *USF/ICC Transformation Order*, the first two factors to be considered in determining whether a study area waiver is in the public interest are the number of lines at issue and the projected universal service fund cost per line. Here, there are only eight customer locations at issue. CenturyLink does not currently receive any universal service support for the Transfer Area. If the study area waiver is granted, Nunn will at most receive \$7.00 per line per month for federal high-cost support for four lines of support. Given that the high-cost fund is frozen, there will be very little impact on overall support mechanism levels.

The third factor to consider in determining whether a waiver is in the public interest is whether such a grant would result in consolidation of study areas that facilitates reductions in cost by taking advantage of the economies of scale, *i.e.*, reduction in cost per line due to the increased number of lines. In this case, granting the waiver will lead to a reduction in the cost of serving customers. CenturyLink does not have facilities to provide more than basic service to the Transfer Area. Given that this area is on the extreme northern portion of CenturyLink's Ault/Pierce Wire Center but is in close proximity to Nunn's facilities, Nunn believes it can serve the area in a more economical manner, offering additional services to the affected locations than

¹⁰ *In the Matter of the Joint Application of Qwest Corporation dba CenturyLink QC ("CenturyLink QC") and Nunn Telephone Company to Rearrange Their Exchange Area Boundaries and to Designate Nunn Telephone Company as the Provider of Last Resort*, Commission Decision Granting Joint Application and Designating Nunn Telephone Company as a Provider of Last Resort, Proceeding No. 16A-0967T, Decision No. C17-0173 (Mar. 1, 2017). CenturyLink has separately filed an application pursuant to Section 214 to discontinue service in the Transfer Area.

those that are currently available. Nunn is willing to serve these customer locations with Fiber-to-the-Home facilities and offer phone and Internet services with download speeds up to 100Mb.

III. REQUEST FOR APPLICATION FEE WAIVER

Additionally, Petitioners respectfully request a waiver of the \$8,790 application fee for carriers seeking a study area waiver to transfer lines below the exchange level. “The Bureau generally considers petitions seeking to transfer lines at the sub-exchange level as routine.”¹¹ The Commission has noted that “the burden and cost has been reduced even further by the streamlined study area boundary freeze waiver process instituted in the *USF/ICC Transformation Order*. The administrative burden and cost associated with reviewing these petitions and issuing decisions, therefore, is relatively small, while the amount of the fee is a deterrent to transferring lines at the sub-exchange level.”¹² In applying this standard, there is good cause to grant the application fee waiver for this Petition particularly since the boundary study area waiver request impacts only eight customers.

IV. CONCLUSION

For the reasons above, Petitioners respectfully request that the Commission find that Petitioners have filed a complete petition for study area waiver and that the petition is appropriate for streamlined treatment, and that the Commission expeditiously issue a public

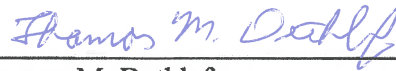
¹¹ See *In the Matter of Connect America Fund, Universal Service Reform – Mobility Fund, ETC Annual Reports and Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers, Developing an Unified Intercarrier Compensation Regime*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 7051, ¶ 89 (2014).

¹² See *id.*

notice seeking comment on this Joint Petition for Waiver so that it can go into effect in accordance with Section 36.4(a) of the Commission's rules.

Respectfully submitted,

CENTURYLINK



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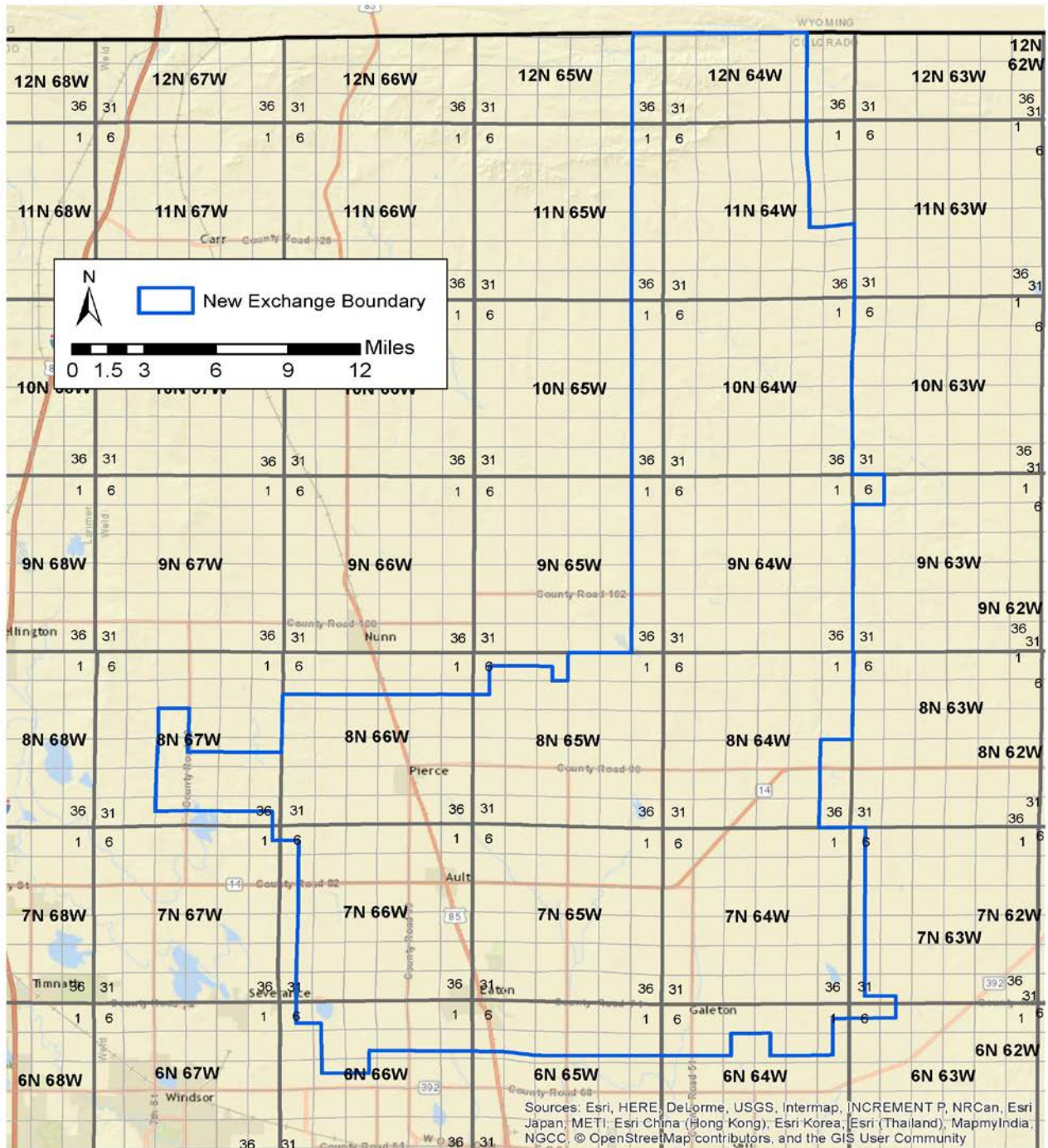
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June 5th, 2017

Eaton-Ault, Colorado Exchange Area



Thursday, December 08, 2016
Prepared by Jacob Barlow

Issued: 1-24-17

Effective:

Advice No. 3152

Decision No.

Decision No. C17-0173

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 16A-0967T

IN THE MATTER OF THE JOINT APPLICATION OF QWEST CORPORATION
DBA CENTURYLINK QC ("CENTURYLINK QC") AND NUNN TELEPHONE
COMPANY TO REARRANGE THEIR EXCHANGE AREA BOUNDARIES AND TO
DESIGNATE NUNN TELEPHONE COMPANY AS THE PROVIDER OF LAST RESORT.

**COMMISSION DECISION GRANTING JOINT
APPLICATION AND DESIGNATING NUNN TELEPHONE
COMPANY AS A PROVIDER OF LAST RESORT**

Mailed Date: March 2, 2017

Mailed Date: March 1, 2017

I. STATEMENT

1. On December 16, 2016, Qwest Corporation, doing business as CenturyLink QC (CenturyLink QC) and Nunn Telephone Company (Nunn) (collectively, Joint Applicants) filed the above-captioned joint application (Application).

2. On January 24, 2017, Joint Applicants filed an Amendment to the Application.

3. The Commission provided notice of Application on December 19, 2016 and the Amended Application on January 26, 2017. No interventions were filed.

4. The Joint Applicants did not file their direct testimony and exhibits at the time they filed the Application.

5. The Application, as amended, is uncontested. Pursuant to § 40-6-109(5), C.R.S., and Rule 1403 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, the uncontested application may be processed under the modified procedure, without a formal hearing.

A. Application

6. This matter is for consideration of the Application filed by the Joint Applicants to revise portions of each company's operating area, to review the associated proposed advice letter filings concurrently with the review of this Application, and to change Nunn's designation as provider of last resort.

7. Joint Applicants propose to transfer portions of the CenturyLink QC territory located in the Ault Exchanges to Nunn. There are distinctly identified portions of CenturyLink QC's territory that are included in the proposed transfer to Nunn: Township 8N, Range 67W; lower ½ mile of sections 10, 11, 12; all of sections 13; 14; 15; and upper ½ mile of sections 22, 23, and 24; and Township 8N, Range 65W; SE ¼ Section of 4.

8. The Application states that no assets will transfer and a total of seven customers and four additional locations will be affected by this transfer. The customers have been notified of the proposed transfer and are in support of this transfer.

9. Joint Applicants indicate that the changes are being requested because CenturyLink QC does not have facilities to provide more than basic service to portions of this area. Due to the fact that the transfer is on the extreme northern portion of CenturyLink QC's Ault wire center that serves the area, and due to the proximity to Nunn's facilities, Nunn believes it can provide service to the area in a more economical manner.

10. Nunn agrees to become the provider of last resort in the newly acquired service territories. The Joint Applicants acknowledge that the exchange boundary rearrangement shall not prohibit competition by either Joint Applicant or its affiliates to provide any telecommunications or information services to any of the customers impacted by the rearrangement, except as otherwise provided herein.

11. There is an acknowledgement made in the Application that if the Commission approves the requested territory exchange, a joint Part 36 Waiver and a Section 214 Application are required to be filed with the Federal Communications Commission for its approval prior to closing the transaction.

12. The Application contains two proposed advice letters and associated tariff sheets that Joint Applicants intend to file, if the Commission approves the request for territory exchange. The filing requests that the Commission approve the contents of the advice letters and tariff sheets and that Joint Applicants be able to file these in compliance with the Commission's order to become effective on not less than two business days' notice after the Federal Communications Commission grants the Part 36 waiver petition.

B. Findings

13. The proposed revisions to the Ault exchange and the rearrangements are not adverse to any customer interests. The implementation of those revisions will not adversely affect the public switched network. Finally, the revisions of the exchanges will not compromise the financial integrity of the providers. Therefore, the proposed revision to the exchange is in the public interest.

14. Consistent with § 40-15-111(2), C.R.S., the Joint Application for the boundary changes of the Ault Exchange should be granted.

II. ORDER

A. The Commission Orders That:

1. The Joint Application filed by Qwest Corporation, doing business as CenturyLink QC (CenturyLink QC) and Nunn Telephone Company is granted.

2. Nunn Telephone Company is designated as the provider of last resort in the territory that is received as a part of the transaction.

3. Citing this Decision as authority, CenturyLink QC and Nunn Telephone Company shall each make an Advice Letter and accompanying tariff sheet filing implementing the tariff changes on not less than two business days' notice. The Advice Letter and accompanying tariff sheets shall not be filed until the applicants receive the appropriate Part 36 Waiver for the transaction from the Federal Communications Commission.

4. The 20-day time period provided by § 40-6-114, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the Commission mails this Decision.

5. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 1, 2017.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

FRANCES A. KONCILJA

WENDY M. MOSER

Commissioners